

**REMARKS**

**Formal Matters**

Claims 1-2, 5-10, 12-13, 15-16, 84-108 and 113-120 are pending after entry of the amendments set forth herein.

Claims 1-2, 5-10, 12-13, 15-16, 84-108 and 113-120 were examined.

Claims 115-120 were allowed.

Claims 1-2, 5-10, 12-13, 15-16, 84-108 and 113-114 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

**The Office Action**

**Claims Rejected On Ground of Obviousness-Type Non-Statutory Double Patenting (U.S. Patent No. 6,685,632 in view of Dobrovolny)**

In the Official Action of November 12, 2009, claims 1-2, 5-10, 12-13, 15-16, 101-108 and 113-114 were rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-2, 5-10, 12-13 and 15-16 of U.S. Patent No. 6,685,632 in view of Dobrovolny, U.S. Patent No. 5,899,627.

Although Applicants do not agree with this ground of rejection and do not acquiesce thereto, in order to advance the prosecution of the instant application, Applicants are submitting herewith a terminal disclaimer regarding U.S. Patent No. 6,685,632. Applicants hereby reserve the right to challenge this ground at a later date.

According, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-2, 5-10, 12-13, 15-16, 101-108 and 113-114 on the ground of nonstatutory obviousness-type double patenting over claims 1-2, 5-10, 12-13 and 15-16 of U.S. Patent No. 6,685,632 in view of Dobrovolny, U.S. Patent No. 5,899,627, as being moot.

**Claims Rejected On Ground of Nonstatutory Obviousness-Type Double Patenting (U.S. Patent No. 6,685,632 in view of Hancock)**

Claims 84-100 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,685,632 in view of Hancock, U.S. Patent No. 6,331,157.

Although Applicants do not agree with this ground of rejection and do not acquiesce thereto, in order to advance the prosecution of the instant application, Applicants are submitting herewith a terminal disclaimer regarding U.S. Patent No. 6,685,632. Applicants hereby reserve the right to challenge this ground at a later date.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 84-100 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,685,632 in view of Hancock, U.S. Patent No. 6,331,157, as being moot.

**Claims Rejected Under 35 U.S.C. Section 102(e) (Cartier et al.)**

Claims 84-89, 92-94 and 97-100 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Cartier et al., U.S. Patent No. 6,102,854. The Examiner asserted that Cartier et al. shows an instrument mount apparatus (Figs. 3 and 5B) comprising a grip member 50 capable of being locked to and released from a stable support/rail 40 via flange 521; a first joint member 53 and a second joint member (ball 54/56).

Applicants have amended claim 84 above to recite that one of said joints movably coupling a main body provides three degrees of freedom of movement of said instrument mount assembly relative to a lower member of said instrument mount assembly that is fixable to a portion of at least one of said first and second retractor blades. Support for this amendment can be found, for example, at Figs. 33-36, the descriptions thereof, and throughout the specification and drawings. It is respectfully submitted that 53 and 55 of Cartier et al. do not provide three degrees of freedom of movement relative to 52 or 521.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 84-89, 92-94 and 97-100 under 35 U.S.C. Section 102(e) as being anticipated by Cartier et al., U.S. Patent No. 6,102,854, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 102(b) (Le Vahn et al.)**

Claims 101-103 and 105-106 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Le Vahn et al., U.S. Patent No. 4,949,707. The Examiner asserted that Le Vahn et al. discloses an instrument mount apparatus having a grip member 136, a first joint member 156 and at least one second joint member 182, with a locking mechanism that is actuatable via a single actuator 146 to lock both first joint member 156 and to lock an orientation of the surgical instrument with respect to the grip member.

Applicants have amended claim 101 above to recite that a first joint member is configured to allow three degrees of movement, in an unlocked configuration, of an upper portion of said grip member relative to a lower portion of said grip member. Support for this amendment can be found, for example, at Figs. 33-36, the descriptions thereof, and throughout the specification and drawings. It is respectfully submitted that member 56 of Le Vahn et al. does not provide three degrees of freedom of movement of 140 relative to 138.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 101-103 and 105-106 under 35 U.S.C. Section 102(b) as being anticipated by Le Vahn et al., U.S. Patent No. 4,949,707, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Cartier et al. in view of Hancock)**

Claims 95-96 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Cartier et al., U.S. Patent No. 6,102,854 in view of Hancock, U.S. Patent No. 6,331,157. The Examiner admitted that Cartier et al. lacks a disclosure of open slots on a retractor blade for receiving and securing sutures, but asserted that it would have been obvious to modify Cartier et al. to include suturing slots in order to receive and secure sutures therein.

Applicants respectfully traverse. Claims 95-96 depend from claim 84, and, it is respectfully submitted, are therefore allowable for at least the same reasons provided above with regard to claim 84, since Hancock does nothing to make up for the deficiencies of Cartier et al. in meeting the recitations of claim 84.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 95-96 under 35 U.S.C. Section 103(a) as being unpatentable over Cartier et al., U.S. Patent No. 6,102,854 in view of Hancock, U.S. Patent No.

6,331,157, as being inappropriate.

**Claim Rejected Under 35 U.S.C. Section 103(a) (Le Vahn et al. in view of Dobrovolny)**

Claim 104 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Le Vahn et al., U.S. Patent No. 4,949,707 in view of Dobrovolny, U.S. Patent No. 5,899,627. The Examiner admitted that Le Vahn et al. lacks a disclosure of at least one joint comprising a ball joint, but asserted that it would have been obvious to modify Le Vahn et al. by substituting the bore and rod second joint with a ball and socket joint as taught by Dobrovolny.

Applicants respectfully traverse. Claim 104 depends from claim 101, and, it is respectfully submitted, is therefore allowable for at least the same reasons provided above with regard to claim 101, since the modification of Le Vahn et al. in view of Dobrovolny as suggested by the Examiner does not make up for the deficiencies of Le Vahn et al. in meeting the recitations of claim 101.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 104 under 35 U.S.C. Section 103(a) as being unpatentable over Le Vahn et al., U.S. Patent No. 4,949,707 in view of Dobrovolny, U.S. Patent No. 5,899,627, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Le Vahn et al. in view of Benetti et al.)**

Claims 107-108 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Le Vahn et al., U.S. Patent No. 4,949,707 in view of Benetti et al., U.S. Patent Application Publication No. 2001/0044572. The Examiner admitted that Le Vahn et al. fails to disclose a plurality of interconnecting links articulating with the joint member and the stabilizer, but asserted that it would have been obvious to replace the rod of Le Vahn et al. with the flexible system of Benetti et al. to enable the surgeon to place the stabilizer in many more orientations.

Applicants respectfully traverse. Claims 107-108 depend from claim 101, and, it is respectfully submitted, are therefore allowable for at least the same reasons provided above with regard to claim 101, since Benetti et al. does nothing to make up for the deficiencies of Le Vahn et al. in meeting the recitations of claim 101.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 107-108 under 35 U.S.C. Section 103(a) as being

unpatentable over Le Vahn et al., U.S. Patent No. 4,949,707 in view of Benetti et al., U.S. Patent Application Publication No. 2001/0044572. , as being inappropriate.

**Conclusion**

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number G UID-011CON2.

Respectfully submitted,  
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